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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Opinion adopted by the Committee under article 14 of the Convention concerning communication No. 52/2012*, **

Submitted by:	Laurent Gabre Gabaroum (represented by Cathy Farran, counsel)
Alleged victim:	The petitioner
State party:	France
Date of communication:	19 March 2012 (initial submission)
Date of the decision:	10 May 2016
Reference:	Opinion adopted pursuant to article 14 (7) of the International Convention on the Elimination of All Forms of Racial Discrimination. The communication was transmitted to the State party on 13 December 2012.
Subject matter:	Discrimination in access to employment, right to equal treatment before tribunals and other judicial authorities, effective protection and remedy against any act of racial discrimination, reversal of the burden of proof
Substantive issue(s):	Discrimination on the ground of national or ethnic origin, reversal of the burden of proof
Procedural issue(s):	Level of substantiation of claims
Articles of the Convention:	2-6

* Adopted by the Committee at its eighty-ninth session (25 April-13 May 2016).

** The following members of the Committee participated in the consideration of the present communication: Alexei S. Avtonomov, Marc Bossuyt, José Francisco Cali Tzay, Anastasia Crickley, Fatimata-Binta Victoire Dah, Ion Diaconu, Afiwa-Kindena Hohouto, Anwar Kemal, Melhem Khalaf, Gun Kut, Yanduan Li, José A. Lindgren Alves, Nicolás Marugán, Gay McDougall, Yemhelbe Mint Mohamed and Verene Albertha Shepherd.

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1. The author of the communication, dated 19 March 2012, is Mr. Laurent Gabre Gabaroum, a French national who was born in Chad on 11 August 1950. He is represented by counsel, Ms. Cathy Farran. The petitioner submits that he is the victim of a violation by France of articles 2, 3, 4, 5 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination.[1]

Factual background

2.1 The petitioner was hired by the firm Renault in the production staff category (category B) on 15 September 1975. On 1 April 1980, he was assigned to the position of night watchman and subsequently changed positions several times within the firm. The firm's discriminatory practices against the petitioner began in April 1982, after he had expressed interest in applying for a management-level position. The petitioner had decided at the time to pursue university studies so that he would be able to apply for more highly qualified positions upon receiving a degree.[2]

2.2 The petitioner submits that Renault's obstruction of his efforts to advance within the firm began when he applied to do an internship. Renault did not allow him to do the internship at the parent company but directed him to the firm CAT, a subsidiary of Renault. Although not a party to the internship agreement, Renault intervened to unilaterally extend the petitioner's internship for three months, which was in violation of the agreement's provisions on the maximum duration of the internship.[3] During the internship, which was not recognized by his university, the petitioner performed management duties for which he did not obtain proper acknowledgement.[4]

2.3 On 1 January 1983, the petitioner returned to the position of night watchman, while continuing his university studies. On 1 February 1983, Renault informed him that he was to be transferred to the day shift, thus making it impossible for him to continue his studies during the day. In order to reconcile his studies and his employment at Renault, the petitioner submitted a request for training leave in May 1983; that request was not approved until five months later. In March 1984, the firm turned down the petitioner's request to do a management-level internship, which was a requirement of his study programme; he was thus prevented from continuing the normal course of his studies. It was not until 15 May 1984, and thanks to support from his university, that he was able to do the internship, at which point he was several months behind the other students in his group.

2.4 On 26 June and 17 September 1984, the petitioner wrote to Renault requesting a review of his status in the light of the degrees he had obtained. In the absence of a reply, the petitioner informed the firm's labour union of his situation in a letter dated 27 September 1984. The petitioner submits that this initiative was followed by a series of racist reactions on the part of his supervisors. He stated that one of the firm's managers, M.B., said to him: "I realize that some people may envy our comfortable standard of living, but I cannot allow myself to become a traitor by promoting a black person to a management position. … Holding a university degree is one thing, but exercising supervisory authority over white employees is another. … I can offer you, if you are in agreement, a position as a specialized employee (ETAM), which is already quite an accomplishment for a black person. You have

[1] France acceded to the Convention on 28 July 1971, and the declaration under article 14 was made on 16 August 1982.

[2] The petitioner has earned a number of certificates and degrees, including a doctorate in law from University of Paris XI which was awarded on 27 February 1984.

[3] According to the petitioner, the agreement stated that the internship could not exceed a period of three months. The petitioner did not provide any additional information.

[4] The petitioner has stated that he was subsequently able to get the university to recognize the internship, but this was thanks solely to his own efforts.

48 hours."[5] The petitioner was finally promoted to the management level on 1 January 1985, becoming the first employee of African origin to hold that rank at the firm. The petitioner submits that this promotion was viewed as an affront by the firm's human resources area, which embarked on a strategy to get rid of him. Of the firm's 130 permanent employees, he was thus the only one to be classified as "unassigned staff",[6] notwithstanding the fact that the degrees he held offered his employer a wide range of possibilities for assigning him to a proper position with clearly defined duties and responsibilities.

2.5 Owing to the difficult financial situation that it was facing, in 1986 Renault launched a restructuring plan that entailed abolishing hundreds of jobs, including the petitioner's. According to the petitioner, Renault put pressure on him by leading him to believe that it had received authorization to lay him off under the re-engineering plan launched as a result of the financial problems. The petitioner stated that, on 8 April 1986, Renault proposed that he renounce his French nationality and accept assistance in order to return to Chad, his country of origin. This repatriation assistance is reserved for immigrant workers, whereas the petitioner is a French national. The petitioner therefore requested, in a letter dated 18 June 1986, support from the NGO Movement against Racism and Anti-Semitism and for Friendship among Peoples (MRAP), which contacted Renault, by way of a letter dated 24 June 1986, about several acts of discrimination committed against the petitioner. In its letter of 8 July 1986, Renault did not contest the actions that had constituted discrimination but instead limited itself to maintaining that no position was available where the petitioner could be assigned because his degrees were "in a technical area having little to do with the industrial activity of the Renault Group". The petitioner submits that, under pressure from Renault to accept its offer of assistance for him to return to Chad, he went on a "hunger strike for dignity", camping out in a caravan in front of Renault's main offices. His action was supported by the Catholic Church, trade unions and some legislators. According to the petitioner, given all the media attention, Renault acknowledged having proposed repatriation assistance to the petitioner even though he was a French national. It ascribed the action to human error, explaining that an employee of the firm had concluded that the petitioner was not French because of his skin colour.[7] On 5 November 1986, as a result of the hunger strike, the petitioner and Renault signed an agreement whereby the firm suspended action to lay him off and agreed to offer him an internship for about one year and to reserve a position for him in the firm.[8]

2.6 The petitioner submits that, as pressure from the outside mounted, Renault called together a group of eminent sociologists specialized in immigration issues to scrutinize the personality of the petitioner, who was accused of being unable — because of his racial origin — to adjust to the values and codes of French society. According to the petitioner, the panel found him to be fully competent to exercise a position of responsibility and recommended that Renault assign him to the firm's payroll or job exchange units. He further submits that Renault did not follow those recommendations, claiming that it could only keep the petitioner on staff if he were assigned to the firm's research area. In December 1986, pursuant to the agreement that had brought an end to the petitioner's hunger strike, Renault proposed to him that he undertake a research project at the Centre de Recherche sur le Bien-Être (CEREBE), an association that conducted research into multiculturalism and was connected with the National Scientific Research Centre. In January 1987, Renault sent the petitioner an agreement whereby he would be seconded to

[5] The petitioner stated that he reported these comments to a member of the firm's senior management but was recommended, in a spirit of conciliation, to pursue the matter with a different manager.

[6] The petitioner stated that this is evidenced by the fact that his payslips, which were attached to his submission, show neither the organizational unit to which he was assigned nor a specific job title.

[7] The petitioner did not provide any documentary evidence substantiating this statement.

[8] The petitioner provided a copy of the agreement.

CEREBE for a period of one year to study the development of an agricultural network in Cameroon and Côte d'Ivoire. The petitioner submits that he had no other choice but to accept that assignment.

2.7 When the petitioner returned to France on 3 May 1989, Renault did not offer him a position concomitant with his skills but instead placed him in a long-term internship. On 12 March 1991, the petitioner was assigned to an official permanent position as communications officer, in which he had the sole task of preparing a weekly press review. He was thus sidelined and was subjected to discrimination and moral harassment for nine years.[9] In 1997, he was told that it was pointless for him to expect a future in management at the firm.[10] The petitioner submits that his requests for professional mobility, which were supported by his supervisors, were systematically denied by the Promotions Committee, bearing in mind that management-level staff are moved around on average every three years. He also submits that the firm's Promotions Committee is controlled by a small group of racist and xenophobic extremists and does not use objective, previously defined, monitorable criteria for making decisions on professional mobility or awarding promotions or raises.[11]

2.8 On 1 June 2000, the petitioner was assigned to a position at the 3A management level, which required few qualifications. In that position, he was paid less than co-workers performing the same duties.[12] On 1 July 2000, the petitioner was reassigned informally, and therefore unofficially, to oversee the Special Export Sales Department (DVSE). In point of fact, this was a phantom job that had no specified tasks.[13] The reassignment was only made official, i.e., was recorded in writing for the first time, on 16 January 2001, at the time of the petitioner's yearly performance review. In other words, the petitioner was the only management-level employee that the firm was wilfully maintaining without any defined tasks and working in humiliating conditions. In the view of the Paris Labour Tribunal, he had been considered as "excluded from the production process" by the firm.[14] In December 2002, the petitioner was elected to the Labour Tribunal. From that date on, his situation deteriorated and he was never again assigned any functions.

[9] The petitioner stated that he had asked to be transferred but his request was not acted upon. He provided a copy of his goals statements for the years 1992, 1995 and 1996, in which he expressed his desire to return to the International Marketing Division, where his professional competencies would be better utilized.

[10] The petitioner stated that he was informed during his annual performance review that, as a black person, he had "gone as far as he could go" and that he should not entertain any illusions about his future at the firm. He provided a copy of his goals statement for 1997, in which he had written: "Albert Einstein said it is harder to crack prejudice than an atom. For 10 years, I have been pursuing a black man's career. I think that is enough."

[11] The petitioner provided reports of the Promotions Committee concerning movements of management-level staff. He contends that these documents show that the Committee selects only employees from European backgrounds, at its discretion, to take over individual positions of responsibility.

[12] The petitioner stated that the original date of the promotion was January 2000 but that it had to be deferred in order to make adjustments in his annual salary, which had a ceiling of 38,656 euros, whereas the floor salary for a position at the 3A level was 41,924 euros. According to the petitioner, the firm permitted that discrepancy to exist based on "different consumption patterns between whites and blacks".

[13] The petitioner provided two statements by Mr. D.G. and Mr. P.N., dated 25 March 2003 and 7 December 2004, respectively, which confirm that the petitioner was treated differently than other management-level staff during his time overseeing the Department; for instance, he had not had an official vehicle assigned to him. He also provided a statement by Ms. A.J., dated 25 March 2004, to the same effect.

[14] See para. 2.9.

2.9 On 19 March 2003, the petitioner initiated proceedings against Renault because of the racial discrimination that he had been subjected to in the workplace since 1982.[15] In a judgment dated 11 January 2005, the Paris Labour Tribunal ordered Renault to pay damages to the petitioner in the amount of 120,000 euros (of which 60,000 euros were to be paid immediately regardless of whether any appeal was filed) as reparation for the racial discrimination he had suffered as a result of the employer's "failure to execute in good faith" the work contract. The Tribunal considered that there had not been any evidence of racial discrimination by Renault vis-à-vis the petitioner before 1991. As from that date, however, the Tribunal found that "worrying phenomena" had occurred which pointed to unfavourable treatment of the petitioner by his employer, such as the relatively slow advancement of his career, the limited bonuses paid to him,[16] the small number of tasks assigned to him and the fact that he had been able to avail himself of mobility arrangements only after having worked in the firm for nine years, even though he had regularly requested promotions and enjoyed the support of his supervisors in that regard. The Tribunal felt, however, that there was nothing to indicate that such unfavourable treatment constituted racial discrimination, as no specific evidence, objective act or document had been provided in support of that claim.[17]

2.10 The petitioner, considering that the finding had clearly not taken account of the racial discrimination that he had been a victim of in violation of article L122-45[18] of the Labour Code, lodged an appeal. Given the case's extensive media coverage, in particular the petitioner's "hunger strike for dignity", several associations and movements engaged in the fight against racial discrimination[19] opted to join the proceedings. By a ruling dated 12 September 2006, the Paris Court of Appeal quashed the lower court's decision, found against the petitioner and all his claims, and ordered him to repay the amount of 60,000 euros. The Court was of the view that no evidence had been presented of discrimination during the period from 1975 to 1985 and that no evidence had been presented in support of the claim that the petitioner had been sidelined as from April 1985. The Court stated as well that the petitioner's file lacked any evidence of the disrespectful remarks or racial slurs that

[15] The petitioner provided a statement from a former co-worker, Mr. P.M., dated 23 March 2004, according to which the petitioner had been the victim of racial, salary and union-related discrimination at Renault. The petitioner also provided a statement by Mr. S.R., a former member of the General Confederation of Labour, dated 26 March 2004, affirming that the petitioner had been a victim of discrimination at Renault and that the firm had attempted to disguise the racism as professional incompetence and had subjected the petitioner to a series of bogus internships. However, the performance reviews conducted by SCOA, the National Scientific Research Centre and the International Marketing Division all attested to the petitioner's competence.

[16] The Labour Tribunal's decision indicated that Renault did not produce evidence that would have made a comparison possible in this regard.

[17] The Labour Tribunal supported the employer's position on this point.

[18] This article was repealed in 2007. It established that no one could be excluded from a recruitment process, access to an internship or to in-service training; no employee could be penalized, laid off or subject to any form of discriminatory measure, whether direct or indirect, in particular with regard to remuneration … by reason of … belonging, in fact or by assumption, to a given ethnicity, nation or race, or of holding specific political views, engaging in organized labour activities, religious beliefs, physical appearance, family name … [T]he employee in question or the applicant to a job, internship or in-service training presents evidence that de facto implies the existence of direct or indirect discrimination. If such evidence is presented, it falls to the respondent to prove that its decision was based on objective criteria unrelated to any form of discrimination. The judge will make a ruling after requesting any investigative measures that may be deemed necessary. Article L-1134-1 of the Labour Code as amended by Act No. 2008-496 of 27 May 2008 incorporates the provisions of this article with regard to the reversal of the burden of proof.

[19] Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP), Association Internationale Culture sans Frontières (AICSF), Fédération des Travailleurs de la Métallurgie (CGT), Union Générale des Ingénieurs Cadres Techniciens (CGT) and the Renault Employees Association.

he had referred to. In the opinion of the Court, the petitioner's allegation of having been subjected to a "culture of racial intolerance" at the firm referred to unsubstantiated general invectives.

2.11 In addition, the Court observed that the petitioner had had the possibility to pursue studies of his choice,[20] that he had been promoted internally to the management-level category and that he had enjoyed appropriate career advancement that was in line with his annual performance reviews. While the Court felt that the time that had elapsed before the petitioner was assigned to an official permanent position "seemed to be long", it saw that as a circumstance of the petitioner's career path up to that point, inasmuch as he had been the subject of termination proceedings in 1986 owing to the firm's financial problems, although those proceedings had been suspended, in the petitioner's case, pursuant to an agreement between him and the firm.[21] With regard to the petitioner's allegation that no specific tasks were assigned to him when he was working at the 3A management level in DVSE,[22] the Court felt that the petitioner's 2001 and 2002 performance reviews,[23] which had been submitted to the Court, pointed to the existence of a real position.[24] The Court moreover felt that it was the petitioner's responsibility to establish the existence of systematic unfavourable treatment using any means he could, for instance by comparing his situation with that of his co-workers. In the case at hand, the Court was of the view that no evidence had been brought forward during the proceedings to show that the petitioner had been the victim of discrimination vis-à-vis his co-workers in terms of career advancement.[25] Lastly, in the view of the Court, the fact that the petitioner had repeatedly accused Renault publicly of racial discrimination and the fact that he was not satisfied with the way his career had advanced were insufficient to establish that he had been the victim of any discrimination.[26]

2.12 The petitioner subsequently filed for a review of the Court of Appeal's ruling. On 11 October 2007, Renault secured an order for the review to be held in abeyance as the petitioner had not repaid the amount of 60,000 euros as ordered by the Court of Appeal.[27] On 4 March 2011, the Court of Cassation ordered the case back to active status as the amount in question had been repaid. On 22 September 2011, the Court of Cassation declared the request for review inadmissible under the terms of article 1014 of the Code of Civil Procedure, insofar as it lacked substantiation.

[20] The Court found that, notwithstanding the fact that Renault had no obligation to hire the petitioner after his internship at CAT, the firm did take him back on staff. His reassignment to the day shift was thus not a "veiled discriminatory sanction" because of his race. The Court also considered that it had not been shown that Renault was responsible for the financing agencies' refusal to fund the second internship but that it was the firm that had financed that internship.

[21] On this point, the Court observed that the termination proceedings were not associated with any inherent cause related to the petitioner: they involved some 500 persons. The Court also noted that the petitioner was not forced to accept the agreement ending the termination and which resulted in his transfer to Africa.

[22] See para. 2.8.

[23] The petitioner provided a copy of his performance reviews for 2000 and 2001, which indicate in general terms that the petitioner had met the stated objectives.

[24] The Court stated that the evidence provided by the petitioner (without indicating what evidence in particular) did not challenge this conclusion, because it was the union leaders who insisted that the petitioner had been excluded from "real responsibilities" for unknown reasons and had been sidelined. That is not sufficient to substantiate the petitioner's claim that his position was an "empty shell".

[25] The Court did not accept the comparisons made by the petitioner, for instance the case of Ms. B., Mr. J. and Mr. R., who, according to the Court, reportedly took more time than the petitioner to receive a promotion.

[26] The Court maintained that the petitioner's e-mails, regardless of how numerous they were or how indignant their tone, did not constitute evidence.

[27] On the basis of article 1009-1 of the French Code of Civil Procedure.

The complaint

3.1 The petitioner submits that the State party has violated article 2 of the Convention inasmuch as France has not taken effective measures to criminalize all forms of racist and xenophobic behaviour or to counter Renault's practice of stigmatizing and stereotyping French nationals of African origin on the basis of their colour, their national origin or their ethnic or racial origin, in violation of the principles enshrined in the Convention.[28]

3.2 The petitioner also submits that the State party violated article 3 of the Convention by failing to acknowledge and take action against practices[29] that could have negative repercussions on the employment of Africans by other firms. The petitioner claims to have suffered significant mental distress as the result of being forced to agree to be assigned to third-party firms such as SCOA (whose name is associated with the former practice of slavery) or to Africa and as the result of problems he encountered in applying to different positions in the firm.

3.3 The petitioner further submits that all the discriminatory behaviour, in particular the racial slurs, to which he was subjected in violation of article 4 of the Convention have caused him great mental suffering.

3.4 The petitioner submits moreover that he has endured great mental and moral suffering in his efforts to pursue his career because of discriminatory treatment that was based on his national, ethnic and racial origin and was intended to perpetuate a "dominant model". Examples of that treatment were that it was not possible for him to get a position concomitant with his competences and qualifications; he was required to do a long-term internship upon his return to France in 1989;[30] he was assigned to a management-level position without any specific functions, notwithstanding the availability of positions matching his qualifications; he was sidelined from 1991 to 2000 and, as from July 2000, within DVSE;[31] and he was paid 10 per cent less than the average salary of other similar staff, in violation of article 5 of the Convention. The petitioner submits as well that the State party violated article 5 because it did not take effective measures to amend, rescind or nullify any laws which have the effect of creating or perpetuating racial discrimination, in particular articles 1009-1 and 1014 of the Code of Civil Procedure concerning reviews of appeal court rulings, which points to a denial of justice.

3.5 Lastly, the petitioner submits that the State party has failed to honour its obligations under article 6 of the Convention. Specifically, it has failed to honour its obligation to provide individuals with effective remedies for violations endured and it has failed to honour its obligation to take all necessary measures to ensure the full impartiality of French judges.[32] The petitioner maintains that the legal provisions that could have led to a finding against Renault were not applied, specifically article L122-45 of the Labour Code, introduced by Act No. 2001-1066, which had reversed the burden of proof in the

[28] The petitioner refers to a 21 April 2010 report conducted by VIGEO on audits and social responsibility, of which he provided a copy. According to the report, the selectivity seen in the profiles of employees recruited by Renault in France did not display significant diversity. The report further indicated that diversity was present at the level of machine operators but not in management (ETAM and I&C (instrumentation and control) employees).

[29] The petitioner refers to the ESCADRE programme. He states that this programme was created in 1986 to provide the human resources unit with listings of the employees who were to be the first ones to be dismissed because of their national, ethnic or racial origin.

[30] See para. 2.7.

[31] See para. 2.8.

[32] The petitioner also stated that, in cases similar to his, the courts have found against Renault for discriminatory practices.

employee's favour,[33] and article 225 of the Criminal Code, which defines and penalizes discrimination as a crime. With regard to the Labour Tribunal's decision of 11 January 2005 and the Paris Court of Appeal's ruling of 12 September 2006, the petitioner maintains that they did not take into account his allegations about the racial discrimination that he had been subjected to.

3.6 The petitioner requests that the State party be compelled to honour its international obligations, namely by guaranteeing means of effective remedy against racial discrimination before the courts. In this regard, he considers that complaints should not be closed and filed away simply because a request for a review of a Court of Appeal decision has been denied. He further requests that the State party take all necessary measures to prevent any further decisions from being taken that result in acts of racial discrimination and incitation to racial hatred being committed against him, namely by ordering Renault to refrain from all acts of intimidation, pressure, retaliatory measures or delay tactics aimed at dissuading him from exercising his right to effective remedies before a court of law.

3.7 The petitioner considers that the French courts have not viewed the events objectively inasmuch as the State party is a shareholder in the firm. He also considers that France does not offer effective means of fighting racial discrimination. He has not filed an action with the High Authority to Combat Discrimination and Promote Equality as that body does not constitute an effective means of fighting discrimination: notwithstanding the increase in complaints of racial discrimination filed before that body, there has been no increase in the number of findings in favour of complainants. Moreover, the High Authority lacks impartiality inasmuch as Mr. L.S., appointed as the first president of the High Authority in 2005, was at the same time chairman of the board of directors of Renault (since 2005) and had previously been the firm's general manager.

State party's observations on the admissibility and merits

4.1 On 4 March 2013, the State party submitted its observations on the admissibility and merits of the communication. It stated that the documentation from the proceedings conducted by the national courts had been returned to the parties. As a result, it was not able to provide the Committee with the documents that Renault had presented to the national courts.

On the admissibility

4.2 The State party submits that the petitioner has not substantiated his claim that it has violated article 3 of the Convention. He simply stated that the State party had failed to acknowledge and take action against racial segregation practices committed by Renault at the time the ESCADRE II system was launched, without providing any evidence in support of his claim. The State party added that, should the Committee find that the petitioner's allegations are sufficiently substantiated, its view is that they should be found inadmissible on the grounds that all available domestic remedies had not been exhausted, bearing in mind that the petitioner never alleged a violation of article 3 before the domestic courts.

On the merits

4.3 With regard to the petitioner's allegations of violations of articles 2, 4, 5 and 6 of the Convention, the State party maintains that, contrary to the assertions made by the petitioner, he enjoyed the right to an impartial tribunal and all the associated guarantees during the proceedings conducted in the national courts.

[33] See para. 2.10.

4.4 The allegation that the domestic courts would, as a matter of principle, refrain from issuing a finding against Renault for acts of racial discrimination, owing to the firm's historical association with the State and the fact that the firm's chief executive officer between 1992 and 2005, Mr. L.S., had become the president of the High Authority in 2005, is entirely unsubstantiated in the State party's view. The State party points out that the High Authority is an independent authority and that it has no standing to interfere in decisions of the courts. The State party notes that the national courts have in fact previously found Renault guilty of acts of racial and union-related discrimination.[34]

4.5 With regard to the allegation that the petitioner was the victim of a denial of justice by the Court of Cassation by virtue of its having denied his request for a review of the appeal court's decision and that he was thus denied effective remedies, the State party notes that, according to the jurisprudence of the Committee, there is no requirement for States parties to guarantee a review in cassation for petitioners.[35] The State party draws attention to the Court of Cassation decision of 22 September 2011, whereby the Court rejected the petitioner's request on the strength of article 1014 of the Code of Civil Procedure, which authorizes its Labour Affairs Chamber to issue admissibility rulings on petitions for review found to be inadmissible or not based on credible grounds for appeal.[36]

4.6 With regard to the petitioner's allegation that the Labour Tribunal and the Court of Appeal had disallowed his allegations of racial discrimination without taking into account the evidence provided, the State party recalls that the Committee is *not* competent to examine how domestic courts interpret the facts or national legislation, unless a decision was manifestly arbitrary or constituted a denial of justice.[37] In the case at hand, the State party considers that the Court of Appeal ruling was quite detailed and thorough and that the petitioner cannot challenge the ruling simply because it was not in his favour.

4.7 Lastly, the State party notes that the petitioner's complaint was examined initially by the Labour Tribunal and then in appeal by the Court of Appeal; this was done with due diligence and in accordance with the domestic legislation in force at the time of the facts. Both jurisdictions found that the petitioner had not substantiated his claim of racial discrimination and that the State party had discharged its obligations under the Convention.[38]

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[34] The State party refers to numerous court decisions finding against Renault: Civil Court of Cassation, Labour Affairs Chamber, 4 February 2009, 07-42.697, Civil Court of Cassation, Labour Affairs Chamber, decision 734 of 15 March 2005, 02-43.560 and 02-43.616, Civil Court of Cassation, Labour Affairs Chamber, decision 406 of 7 February 2012, 10-19.505 (*Boubakar X et al.*). In this last decision, the Court rejected the request for review filed by Renault, as it considered that the employer had not objectively substantiated the prolonged delay experienced by the employee in career advancement vis-à-vis other employees in a comparable situation. The Court upheld the Court of Appeal's ruling that the delay was not unrelated to the ethnic discrimination claimed by the employee.

[35] The State party refers to the Committee's opinion in respect of communication No. 1/1984 (*Yilmaz-Dogan v. Netherlands*) of 10 August 1988, in which the Committee stated that article 6 of the Convention does not include an obligation for States parties to provide a mechanism for successive appeals all the way up to the Supreme Court.

[36] The State party provided a copy of a decision of the European Court of Human Rights which indicates that the procedure used by the French Court of Cassation for deciding on admissibility of requests for review is in conformity with the European Convention on Human Rights. European Court of Human Rights, *Burg et al. v. France*, decision No. 34763/02 of 28 January 2003. The State party also referred to *Salé v. France*, decision No. 35765/04 of 21 March 2006, para. 23.

[37] The State party refers to the Committee's opinion concerning communication No. 40/2007 (*Er v. Denmark*), of 8 August 2007, para. 7.2.

[38] The State party refers to the Committee's opinion concerning communication No. 6/1995 (*Z.U.B.S. v. Australia*) of 17 January 1995, paras. 9.2 and 9.3.

Petitioner's comments on the State party's observations

5.1 On 13 May 2013, the petitioner submitted his comments on the State party's observations on the admissibility and merits of his complaint. The petitioner referred to the Committee's previous jurisprudence and maintained that his complaint was admissible under article 3.[39] In his opinion, he has shown that the violations of articles 3 and 6 of the Convention are linked, because the national courts failed to rule on his allegation that the ESCADRE II programme constituted a policy of social apartheid and professional segregation aimed at blocking the career advancement of French nationals of African origin. The petitioner further stated that, with regard to the generally recognized principles of international law referred to in article 11 (3) of the Convention and the jurisprudence of the Committee,[40] the rule on exhausting all domestic remedies does not imply that the petitioner must have expressly invoked before a domestic court the provisions of the Convention that he claims have been violated. It is enough that the request submitted to the Committee be related to the purpose of the domestic proceedings, which is what was done in the instant case.

5.2 With regard to the violation of articles 2, 4, 5 and 6 of the Convention, the petitioner submits that the State party is seeking to shield itself behind the reasoning used by the Court of Appeal in its 22 September 2011 ruling, whereby it had found that the petitioner had not shown how his personal situation had been affected by Renault's actions. He maintains that he submitted his request to the Committee in order to establish that the Court of Appeal had deliberately excluded the evidence that he had submitted when it stated that no concrete evidence, no document and no objective fact had been presented that substantiated his claims. In his view, that decision constituted a denial of justice.

5.3 The petitioner reiterated his claim that the discrimination to which he had been subjected by Renault had occurred throughout his employment at the firm. As to his allegation that he had nearly been terminated for financial reasons without authorization from the Departmental Labour Directorate, the petitioner referred to a document that he provided to the Committee showing that the authorization to terminate covered 415 employees at the Billancourt manufacturing complex and 113 employees at the corporate headquarters. In his view, Renault deliberately confused the terms "management staff" and "headquarters staff" and concludes that his name was not on the list of persons whose termination had been authorized. The petitioner reiterated that there is a policy of institutionalized discrimination at Renault.[41]

[39] See the Committee's opinion concerning communication No. 46/2009 (*Dawas and Shava v. Denmark*) of 6 March 2012, para. 63, in which the Committee states: "the question of whether such assault constituted or resulted in discrimination vis-à-vis the petitioners on the basis of their national origin or ethnicity and, if so, whether they were offered an effective remedy in this regard, relates to the substance of the communication and, for this reason, should be considered on the merits". The Committee accordingly found that the petitioners had sufficiently substantiated their claims under articles 2 (1) (d), 4 and 6 of the Convention for the purposes of admissibility.

[40] According to the petitioner, the Committee does not adhere to a strict interpretation of the rule on exhausting domestic remedies. He cites a number of opinions of the Committee, including those relating to communication No. 2/1989 (*Diop v. France*) of 15 March 1989 and communication No. 41/2008 (*Jama v. Denmark*) of 21 August 2009.

[41] See para. 3.4.

5.4 With regard to the State party's observation that the national courts have in the past found against Renault, the petitioner pointed out that, with one exception, all the court decisions cited by the State party referred to cases of union-related discrimination and not to racial discrimination.[42] The only finding concerning racial discrimination had been in a case similar to his own,[43] and the decision was issued after the one in his case. In his view, his "battle" had opened the way for similar cases and confirms the existence of a policy of racial discrimination at Renault.

5.5 The petitioner maintains that the Labour Tribunal and the Court of Appeal lacked impartiality in his case and that, consequently, their findings were arbitrary and constituted a denial of justice.[44]

5.6 The petitioner also maintains that the Court of Appeal did not apply the relevant rules concerning burden of proof in cases of discrimination and that its failure to do so constituted a denial of justice. Under the Labour Code (art. L1134-1), it is the employer who must prove that it did not use illegitimate grounds to justify different treatment. In the case at hand, the Court did not seek to find an explanation for the different treatment given to the petitioner. The Court did not question why the petitioner had been the only employee of African origin among the 130 promoted in 1985, or why he had been the only management-level employee to be placed administratively in a position classified as "unassigned staff" without any specific functions, when several positions compatible with his qualifications were available. In addition, the Court had not questioned why the petitioner had been the only management-level employee placed in a termination programme that was based on financial considerations. Similarly, the Court had not addressed the matter of the assistance for "repatriation" offered to the petitioner, who was a French national. Nor did the Court ask Renault to explain why the petitioner's requests for mobility had gone unacknowledged for nine years while other employees were being moved around on average every three years.

5.7 Lastly, the petitioner reiterated that the Court of Cassation had denied him justice by refusing his request for review of the Court of Appeal's decision without giving any justification for that ruling. He cited a study which had found that requests for such reviews in cases involving discrimination result — in a vastly higher number than in other cases — in a ruling of inadmissibility or in rejection.[45]

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, pursuant to article 14 (7) (a) of the Convention, whether or not the communication is admissible.

6.2 The Committee notes that the State party contests the admissibility of the complaint with regard to the violation of article 3 of the Convention inasmuch as the petitioner has not sufficiently substantiated his allegations and has not exhausted all available domestic remedies. The Committee takes note of the petitioner's claims that the State party did not acknowledge or take action against Renault's practice of stigmatizing and stereotyping French nationals of African origin on the basis of their colour. The petitioner submits that

[42] See para. 4.4.

[43] The petitioner states that this was a case of racial discrimination against one of the rare management-level employees of African origin at Renault, Civil Court of Cassation, Labour Affairs Chamber, decision 406 of 7 February 2012, 10-19.505 (*Boubakar X et al.*).

[44] The petitioner refers to the Committee's opinion in *Er v. Denmark*.

[45] The petitioner did not provide a copy of the study on workplace discrimination.

these practices could have negative repercussions for the employment of African individuals by other firms, in violation of article 3 of the Convention. The Committee notes, however, that the petitioner limited himself to making general statements and did not provide any information or evidence in support of his allegations. It therefore considers that the petitioner's complaint with regard to article 3 is not sufficiently substantiated and that it is inadmissible under article 14 (7) (a) of the Convention.[46]

6.3 The Committee notes that the State party did not present any objections with regard to the admissibility of the allegations concerning articles 2, 4, 5 and 6 of the Convention, and proceeds to its examination on the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information submitted by the petitioner and the State party, as required under article 14 (7) (a) of the Convention.

7.2 The Committee takes note of the petitioner's submission that the employer should have presented proof that it had not used illegitimate criteria in order to justify its unequal treatment of the petitioner. The Committee recalls in this regard that presumed victims of racial discrimination are not required to show that there was discriminatory intent against them.[47] In the case at hand, the Committee notes that the Court of Appeal stated that it was incumbent upon the petitioner to present evidence of a pattern of unfavourable treatment towards him using any means available, including by drawing useful comparisons with regard to his occupational status. The Committee also takes note of the petitioner's assertion that, during the domestic proceedings, including before the Court of Appeal, he had presented evidence indicating the existence of discriminatory practices against him and that, consequently, he had discharged his obligation to present the necessary information for the burden of proof to be reversed. The Committee is of the view that the persistence of the courts, in particular the Court of Appeal, in requiring the petitioner to prove discriminatory intent runs counter to the Convention's prohibition against any and all behaviour that has a discriminatory effect and counter to the procedure for the reversal of the burden of proof provided in article L-1134-1 (formerly article L.122-45) of the Labour Code. As it was the State party itself that adopted this procedure, the fact that it is not applying the procedure correctly constitutes a violation of the petitioner's right to an effective remedy. The Committee therefore finds that the petitioner's rights under articles 2 and 6 of the Convention have been violated.[48]

7.3 In view of the foregoing, the Committee will not examine separately the petitioner's allegations in respect of articles 4 and 5 of the Convention.

8. The Committee, acting pursuant to article 14 (7) (a) of the Convention, finds that the information before it in the present case discloses a violation of articles 2 and 6 of the Convention by the State party.

[46] See, for instance, the Committee's opinions concerning communication No. 5/1994 (*C.P. v. Denmark*) of 15 March 1993, para. 6.3, and communication No. 39/2006 (*D.F. v. Australia*) of 22 February 2008, paras. 7.2 and 8.

[47] See the Committee's opinion concerning communication No. 56/2014 (*V.S. v. Slovakia*) of 4 December 2015, para. 7.4.

[48] See *V.S. v. Slovakia*, para. 7.4, and *Er v. Denmark*, para. 7.4.

9. The Committee recommends that the State take steps to ensure that the principle of reversal of the burden of proof is fully observed by: (a) enhancing the judicial procedures available to victims of racial discrimination by, inter alia, rigorously applying the principle of reversal of the burden of proof; and (b) disseminating clear information about domestic remedies available to presumed victims of racial discrimination. The State party is also requested to widely disseminate the present opinion of the Committee, in particular among judiciary officials.

10. The Committee requests the State party to provide, within 90 days, information on the steps taken to give effect to the Committee's opinion.